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SENATE BILL 46

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Richard M. Romero

AN ACT

RELATING TO PUBLIC EMPLOYEES; ENACTING THE PUBLIC EMPLOYEE
BARGAINING ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Public Employee Bargaining Act".

Section 2. PURPOSE OF ACT.--The purpose of the Public
Employee Bargaining Act is to guarantee public employees the
right to organize and bargain collectively with their
employers, to promote harmonious and cooperative relationships
between public employers and public employees and to protect
the public interest by ensuring, at all times, the orderly
operation and functioning of the state and its political
subdivisions.

Section 3. CONFLICTS.--In the event of conflict with

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1 other laws, the provisions of the Public Employee Bargaining
2 Act shall supersede other previously enacted legislation and
3 regulations; provided that the Public Employee Bargaining Act
4 shall not supersede the provisions of the Bateman Act, the
5 Personnel Act, Sections 10-7-1 through 10-7-19 NMSA 1978, the
6 Group Benefits Act, the Per Diem and Mileage Act, the Retiree
7 Health Care Act, public employee retirement laws or the Tort
8 Claims Act, provided further that it shall not be a conflict
9 for a public employer and an exclusive representative to
10 negotiate group insurance contribution rates or employee
11 benefits that exceed those provided in any other act.

12 Section 4. DEFINITIONS. -- As used in the Public Employee
13 Bargaining Act:

14 A. "appropriate bargaining unit" means a group of
15 public employees designated by the board or local board for the
16 purpose of collective bargaining;

17 B. "appropriate governing body" means the
18 policymaking body or individual representing a public employer
19 as designated in Section 7 of the Public Employee Bargaining
20 Act;

21 C. "authorization card" means a signed affirmation
22 by a member of an appropriate bargaining unit designating a
23 particular organization as exclusive representative;

24 D. "board" means the public employee labor
25 relations board;

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1 E. "certification" means the designation by the
2 board or local board of a labor organization as the exclusive
3 representative for all public employees in an appropriate
4 bargaining unit;

5 F. "collective bargaining" means the act of
6 negotiating between a public employer and an exclusive
7 representative for the purpose of entering into a written
8 agreement regarding wages, hours and other terms and conditions
9 of employment;

10 G. "confidential employee" means an employee who
11 devotes a majority of work time to formulate labor-management
12 policies or to assist anyone who formulates such policies;

13 H. "emergency" means a one-time occurrence of a
14 "manifest crisis";

15 I. "exclusive representative" means a labor
16 organization that, as a result of certification, has the right
17 to represent all public employees in an appropriate bargaining
18 unit for the purposes of collective bargaining;

19 J. "impasse" means failure of a public employer and
20 an exclusive representative, after good-faith bargaining, to
21 reach agreement in the course of negotiating a collective
22 bargaining agreement;

23 K. "labor organization" means an employee
24 organization, one of whose purposes is the representation of
25 public employees in collective bargaining and in otherwise

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1 meeting, consulting and conferring with employers on matters
2 pertaining to employment relations;

3 L. "local board" means a local labor relations
4 board established by a public employer, other than the state,
5 through ordinance, resolution or charter amendment;

6 M. "lockout" means an act by a public employer to
7 prevent its employees from going to work for the purpose of
8 resisting the demands of the employees' exclusive
9 representative or for the purpose of gaining a concession from
10 the exclusive representative;

11 N. "management employee" means an employee who is
12 engaged primarily in executive and management functions and is
13 charged with the responsibility of developing, administering or
14 effectuating management policies. An employee shall not be
15 deemed a management employee solely because the employee
16 participates in cooperative decision-making programs on an
17 occasional basis;

18 O. "mediation" means assistance by an impartial
19 third party to resolve an impasse between a public employer and
20 an exclusive representative regarding employment relations
21 through interpretation, suggestion and advice;

22 P. "professional employee" means an employee whose
23 work is predominantly intellectual and varied in character and
24 whose work involves the consistent exercise of discretion and
25 judgment in its performance and requires knowledge of an

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1 advanced nature in a field of learning customarily requiring
2 specialized study at an institution of higher education or its
3 equivalent. The work of a professional employee is of such
4 character that the output or result accomplished cannot be
5 standardized in relation to a given period of time;

6 Q. "public employee" means a regular
7 nonprobationary employee of a public employer; provided that,
8 in the public schools, "public employee" shall also include a
9 regular probationary employee;

10 R. "public employer" means the state or a political
11 subdivision thereof, including a municipality that has adopted
12 a home rule charter, and does not include a government of an
13 Indian nation, tribe or pueblo;

14 S. "strike" means a public employee's refusal, in
15 concerted action with other public employees, to report for
16 duty or his willful absence in whole or in part from the full,
17 faithful and proper performance of the duties of employment for
18 the purpose of inducing, influencing or coercing a change in
19 the conditions, compensation, rights, privileges or obligations
20 of public employment; and

21 T. "supervisor" means an employee who devotes a
22 majority of work time to supervisory duties, who customarily
23 and regularly directs the work of two or more other employees
24 and who has the authority in the interest of the employer to
25 hire, promote or discipline other employees or to recommend

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1 such actions effectively, but "supervisor" does not include an
2 individual who performs merely routine, incidental or clerical
3 duties or who occasionally assumes a supervisory or directory
4 role or whose duties are substantially similar to those of his
5 subordinates and does not include a lead employee or an
6 employee who participates in peer review or occasional employee
7 evaluation programs.

8 Section 5. RIGHTS OF PUBLIC EMPLOYEES. -- Public employees,
9 other than management employees and confidential employees, may
10 form, join or assist a labor organization for the purpose of
11 collective bargaining through representatives chosen by public
12 employees without interference, restraint or coercion and shall
13 have the right to refuse any such activities.

14 Section 6. RIGHTS OF PUBLIC EMPLOYERS. -- Unless limited by
15 the provisions of a collective bargaining agreement or by other
16 statutory provision, a public employer may:

17 A. direct the work of, hire, promote, assign,
18 transfer, demote, suspend, discharge or terminate public
19 employees;

20 B. determine qualifications for employment and the
21 nature and content of personnel examinations;

22 C. take actions as may be necessary to carry out
23 the mission of the public employer in emergencies; and

24 D. retain all rights not specifically limited by a
25 collective bargaining agreement or by the Public Employee

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1 Bargaining Act.

2 Section 7. APPROPRIATE GOVERNING BODY--PUBLIC EMPLOYER. --

3 The appropriate governing body of a public employer is the
4 policymaking individual or body representing the public
5 employer. In the case of the state, the appropriate governing
6 body is the governor or his designee or, in the case of a
7 constitutionally created body, the constitutionally designated
8 head of that body. At the local level, the appropriate
9 governing body is the elected or appointed representative body
10 or individual charged with management of the local public body.
11 In the event of dispute, the board shall determine the
12 appropriate governing body.

13 Section 8. PUBLIC EMPLOYEE LABOR RELATIONS BOARD--
14 CREATED--TERMS--QUALIFICATIONS. --

15 A. The "public employee labor relations board" is
16 created. The board consists of three members appointed by the
17 governor. The governor shall appoint one member recommended by
18 organized labor representatives actively involved in
19 representing public employees, one member recommended by public
20 employers actively involved in collective bargaining and one
21 member jointly recommended by the other two appointees.

22 B. Except for appointments made in 2003, board
23 members shall serve for a period of three years with terms
24 commencing on July 1. Vacancies shall be filled by appointment
25 by the governor in the same manner as the original appointment,

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1 and such appointments shall only be made for the remainder of
2 the unexpired term. A board member may serve an unlimited
3 number of terms.

4 C. During the term for which he is appointed, a
5 board member shall not hold or seek any other political office
6 or public employment or be an employee of a labor organization
7 or an organization representing public employees or public
8 employers.

9 D. Each board member shall be paid per diem and
10 mileage in accordance with the provisions of the Per Diem and
11 Mileage Act.

12 E. For the purpose of making initial appointments
13 to the board in 2003, the governor shall designate one member
14 to serve a one-year term, one member to serve a two-year term
15 and one member to serve a three-year term. Thereafter, all
16 members shall be appointed for three-year terms.

17 Section 9. BOARD--POWERS AND DUTIES.--

18 A. The board shall promulgate rules necessary to
19 accomplish and perform its functions and duties as established
20 in the Public Employee Bargaining Act, including the
21 establishment of procedures for:

22 (1) the designation of appropriate bargaining
23 units;

24 (2) the selection, certification and
25 decertification of exclusive representatives; and

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1 (3) the filing of, hearing on and
2 determination of complaints of prohibited practices.

3 B. The board shall:

4 (1) hold hearings and make inquiries necessary
5 to carry out its functions and duties;

6 (2) conduct studies on problems pertaining to
7 employee-employer relations; and

8 (3) request from public employers and labor
9 organizations the information and data necessary to carry out
10 the board's functions and responsibilities.

11 C. The board may issue subpoenas requiring, upon
12 reasonable notice, the attendance and testimony of witnesses
13 and the production of evidence, including books, records,
14 correspondence or documents relating to the matter in question.
15 The board may prescribe the form of subpoena, but it shall
16 adhere insofar as practicable to the form used in civil actions
17 in the district court. The board may administer oaths and
18 affirmations, examine witnesses and receive evidence.

19 D. The board shall decide issues by majority vote
20 and shall issue its decisions in the form of written orders and
21 opinions.

22 E. The board may hire personnel or contract with
23 third parties as it deems necessary to assist it in carrying
24 out its functions.

25 F. The board has the power to enforce provisions of

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1 the Public Employee Bargaining Act through the imposition of
2 appropriate administrative remedies.

3 G. A rule promulgated by the board or a local board
4 shall not require, directly or indirectly, as a condition of
5 continuous employment, a public employee covered by the Public
6 Employee Bargaining Act to pay money to a labor organization
7 that is certified as an exclusive representative. The issue of
8 fair share or agency shop shall be left a mandatory subject of
9 bargaining by the public employer and the exclusive
10 representative of each bargaining unit.

11 Section 10. LOCAL BOARD--CREATED.--

12 A. With the approval of the board, a public
13 employer other than the state may, by ordinance, resolution or
14 charter amendment, create a local board similar to the public
15 employee labor relations board. Once created and approved, the
16 local board shall assume the duties and responsibilities of the
17 public employee labor relations board. A local board shall
18 follow all procedures and provisions of the Public Employee
19 Bargaining Act unless otherwise approved by the board.

20 B. The local board shall be composed of three
21 members appointed by the public employer. One member shall be
22 appointed on the recommendation of individuals representing
23 labor, one member shall be appointed on the recommendation of
24 individuals representing management and one member shall be
25 appointed on the recommendation of the first two appointees.

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1 C. Local board members shall serve one-year terms.
2 Local board members may serve an unlimited number of terms.
3 Vacancies shall be filled in the same manner as the original
4 appointment, and such appointments shall only be made for the
5 remainder of the unexpired term.

6 D. During the term for which he is appointed, a
7 local board member shall not hold or seek any other political
8 office or public employment or be an employee of a union or an
9 organization representing public employees or public employers.

10 E. Each local board member shall be paid per diem
11 and mileage in accordance with the provisions of the Per Diem
12 and Mileage Act.

13 Section 11. LOCAL BOARD-- POWERS AND DUTIES. --

14 A. The local board shall promulgate rules necessary
15 to accomplish and perform its functions and duties as
16 established in the Public Employee Bargaining Act, including
17 the establishment of procedures for:

- 18 (1) the designation of appropriate bargaining
19 units;
20 (2) the selection, certification and
21 decertification of exclusive representatives; and
22 (3) the filing of, hearing on and
23 determination of complaints of prohibited practices.

24 B. The local board shall:

- 25 (1) hold hearings and make inquiries necessary

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1 to carry out its functions and duties;

2 (2) request information and data from public
3 employers and labor organizations to carry out the local
4 board's functions and responsibilities; and

5 (3) hire personnel or contract with third
6 parties as the appropriate governing body deems necessary to
7 assist the local board in carrying out its functions.

8 C. The local board may issue subpoenas requiring,
9 upon reasonable notice, the attendance and testimony of
10 witnesses and the production of evidence, including books,
11 records, correspondence or documents relating to the matter in
12 question. The local board may prescribe the form of subpoena,
13 but it shall adhere insofar as practicable to the form used in
14 civil actions in the district court. The local board may
15 administer oaths and affirmations, examine witnesses and
16 receive evidence.

17 D. The local board shall decide all issues by
18 majority vote and shall issue its decisions in the form of
19 written orders and opinions.

20 E. The local board has the power to enforce
21 provisions of the Public Employee Bargaining Act or a local
22 collective bargaining ordinance, resolution or charter
23 amendment through the imposition of appropriate administrative
24 remedies.

25 Section 12. HEARING PROCEDURES. --

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1 A. The board or local board may hold hearings for
2 the purposes of:

- 3 (1) information gathering and inquiry;
4 (2) adopting rules; and
5 (3) adjudicating disputes and enforcing the
6 provisions of the Public Employee Bargaining Act and rules
7 adopted pursuant to that act.

8 B. The board or local board shall adopt rules
9 setting forth procedures to be followed during hearings of the
10 board or local board. The procedures adopted for conducting
11 adjudicatory hearings shall meet all minimal due process
12 requirements of the state and federal constitutions.

13 C. The board or local board may appoint a hearing
14 examiner to conduct any adjudicatory hearing authorized by the
15 board or local board. At the conclusion of the hearing, the
16 examiner shall prepare a written report, including findings and
17 recommendations, all of which shall be submitted to the board
18 or local board for its decision.

19 D. A rule proposed to be adopted by the board or
20 local board that affects a person or governmental entity
21 outside of the board or local board and its staff shall not be
22 adopted, amended or repealed without public hearing and comment
23 on the proposed action before the board or local board. The
24 public hearing shall be held after notice of the subject matter
25 of the rule, the action proposed to be taken, the time and

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1 place of the hearing, the manner in which interested persons
2 may present their views and the method by which copies of the
3 proposed rule, proposed amendment or repeal of an existing rule
4 may be obtained. All meetings of the board shall be held in
5 Santa Fe. All meetings of local boards shall be held in the
6 county of residence of the local public employer. Notice shall
7 be published once at least thirty days prior to the hearing
8 date in a newspaper of general circulation in the state or, in
9 the case of a local board hearing, in a newspaper of general
10 circulation in the county, and notice shall be mailed at least
11 thirty days prior to the hearing date to all persons who have
12 made a written request for advance notice of hearings.

13 E. All adopted rules shall be filed in accordance
14 with applicable state statutes.

15 F. A verbatim record made by electronic or other
16 suitable means shall be made of every rulemaking and
17 adjudicatory hearing. The record shall not be transcribed
18 unless required for judicial review or unless ordered by the
19 board or local board.

20 Section 13. APPROPRIATE BARGAINING UNITS. --

21 A. The board or local board shall, upon receipt of
22 a petition for a representation election filed by a labor
23 organization, designate the appropriate bargaining units for
24 collective bargaining. Appropriate bargaining units shall be
25 established on the basis of occupational groups, clear and

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1 identifiable communities of interest in employment terms and
2 conditions and related personnel matters among the public
3 employees involved. Occupational groups shall generally be
4 identified as blue-collar, secretarial clerical, technical,
5 professional, paraprofessional, police, fire, corrections and
6 supervisory employees. The parties, by mutual agreement, may
7 further consolidate occupational groups. Essential factors in
8 determining appropriate bargaining units shall include the
9 principles of efficient administration of government, the
10 history of collective bargaining and the assurance to public
11 employees of the fullest freedom in exercising the rights
12 guaranteed by the Public Employee Bargaining Act; provided,
13 however, that no supervisory employee may be consolidated or
14 otherwise included in a bargaining unit with non-supervisory
15 employees.

16 B. Within thirty days of a disagreement arising
17 between a public employer and a labor organization concerning
18 the composition of an appropriate bargaining unit, the board or
19 local board shall hold a hearing concerning the composition of
20 the bargaining unit before designating an appropriate
21 bargaining unit.

22 C. The board or local board shall not include in an
23 appropriate bargaining unit managers or confidential employees.

24 Section 14. ELECTIONS. --

25 A. Whenever, in accordance with rules prescribed by

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1 the board or local board, a petition is filed by a labor
2 organization containing the signatures of at least thirty
3 percent of the public employees in an appropriate bargaining
4 unit, the board or local board shall conduct a secret ballot
5 representation election to determine whether and by which labor
6 organization the public employees in the appropriate bargaining
7 unit shall be represented. The ballot shall contain the name
8 of any labor organization submitting a petition containing
9 signatures of at least thirty percent of the public employees
10 in the appropriate bargaining unit. The ballot shall also
11 contain a provision allowing public employees to indicate
12 whether they do not desire to be represented by a labor
13 organization.

14 B. Once a labor organization has filed a valid
15 petition with the board or local board calling for a
16 representation election, other labor organizations may seek to
17 be placed on the ballot. Such an organization shall file a
18 petition containing the signatures of not less than thirty
19 percent of the public employees in the appropriate bargaining
20 unit no later than ten days after the board or the local board
21 and the public employer post a written notice that the petition
22 in Subsection A of this section has been filed by a labor
23 organization.

24 C. As an alternative to the provisions of
25 Subsection A of this section, a public employer and a labor

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1 organization with a reasonable basis for claiming to represent
2 a majority of the employees in an appropriate bargaining unit
3 may establish an alternative appropriate procedure for
4 determining majority status. The procedure may include a labor
5 organization's submission of authorization cards from a
6 majority of the employees in an appropriate bargaining unit.
7 The board or local board shall not certify an appropriate
8 bargaining unit if the public employer objects to the
9 certification without an election.

10 D. If a labor organization receives a majority of
11 votes cast, it shall be certified as the exclusive
12 representative of all public employees in the appropriate
13 bargaining unit. Within fifteen days of an election in which
14 no labor organization receives a majority of the votes cast, a
15 runoff election between the two choices receiving the largest
16 number of votes cast shall be conducted. The board or local
17 board shall certify the results of the election, and, when a
18 labor organization receives a majority of the votes cast, the
19 board or local board shall certify the labor organization as
20 the exclusive representative of all public employees in the
21 appropriate bargaining unit.

22 E. An election shall not be conducted if an
23 election or runoff election has been conducted in the twelve-
24 month period immediately preceding the proposed representation
25 election. An election shall not be held during the term of an

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1 existing collective bargaining agreement, except as provided in
2 Section 16 of the Public Employee Bargaining Act.

3 Section 15. EXCLUSIVE REPRESENTATION. --

4 A. A labor organization that has been certified by
5 the board or local board as representing the public employees
6 in the appropriate bargaining unit shall be the exclusive
7 representative of all public employees in the appropriate
8 bargaining unit. The exclusive representative shall act for
9 all public employees in the appropriate bargaining unit and
10 negotiate a collective bargaining agreement covering all public
11 employees in the appropriate bargaining unit. The exclusive
12 representative shall represent the interests of all public
13 employees in the appropriate bargaining unit without
14 discrimination or regard to membership in the labor
15 organization.

16 B. This section does not prevent a public employee,
17 acting individually, from presenting a grievance without the
18 intervention of the exclusive representative. At a hearing on
19 a grievance brought by a public employee individually, the
20 exclusive representative shall be afforded the opportunity to
21 be present and make its views known. An adjustment made shall
22 not be inconsistent with or in violation of the collective
23 bargaining agreement then in effect between the public employer
24 and the exclusive representative.

25 Section 16. DECERTIFICATION OF EXCLUSIVE

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1 REPRESENTATIVE. --

2 A. A member of a labor organization or the labor
3 organization itself may initiate decertification of a labor
4 organization as the exclusive representative if thirty percent
5 of the public employees in the appropriate bargaining unit make
6 a written request to the board or local board for a
7 decertification election. Decertification elections shall be
8 held in a manner prescribed by rule of the board.

9 B. When there is a collective bargaining agreement
10 in effect, a request for a decertification election shall be
11 made to the board or local board no earlier than ninety days
12 and no later than sixty days before the expiration of the
13 collective bargaining agreement; provided, however, a request
14 for an election may be filed at any time after the expiration
15 of the third year of a collective bargaining agreement with a
16 term of more than three years.

17 C. When, within the time period prescribed in
18 Subsection B of this section, a competing labor organization
19 files a petition containing signatures of at least thirty
20 percent of the public employees in the appropriate bargaining
21 unit, a representation election rather than a decertification
22 election shall be conducted.

23 D. When an exclusive representative has been
24 certified but no collective bargaining agreement is in effect,
25 the board or local board shall not accept a request for a

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1 decertification election earlier than twelve months subsequent
2 to a labor organization's certification as the exclusive
3 representative.

4 Section 17. SCOPE OF BARGAINING. --

5 A. Except for retirement programs provided pursuant
6 to the Public Employees Retirement Act or the Educational
7 Retirement Act, public employers and exclusive representatives:

8 (1) shall bargain in good faith on wages,
9 hours and all other terms and conditions of employment and
10 other issues agreed to by the parties. However, neither the
11 public employer nor the exclusive representative shall be
12 required to agree to a proposal or to make a concession; and

13 (2) shall enter into written collective
14 bargaining agreements covering employment relations.

15 B. The obligation to bargain collectively imposed
16 by the Public Employee Bargaining Act shall not be construed as
17 authorizing a public employer and an exclusive representative
18 to enter into an agreement that is in conflict with the
19 provisions of any other statute of this state. In the event of
20 conflict between the provisions of any other statute of this
21 state and an agreement entered into by the public employer and
22 the exclusive representative in collective bargaining, the
23 statutes of this state shall prevail.

24 C. Payroll deduction of the exclusive
25 representative's membership dues shall be a mandatory subject

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1 of bargaining if either party chooses to negotiate the issue.
2 The amount of dues shall be certified in writing by an official
3 of the labor organization and shall not include special
4 assessments, penalties or fines of any type. The public
5 employer shall honor payroll deductions until the authorization
6 is revoked in writing by the public employee in accordance with
7 the negotiated agreement and for so long as the labor
8 organization is certified as the exclusive representative.
9 During the time that a board certification is in effect for a
10 particular appropriate bargaining unit, the public employer
11 shall not deduct dues for any other labor organization.

12 D. The scope of bargaining for representatives of
13 public schools as well as educational employees in state
14 agencies shall include, as a mandatory subject of bargaining,
15 professional issues to the extent that those matters are within
16 the discretion of the public school employer or state agency.
17 Such issues shall include, but are not limited to, determining
18 professional training and development, planning curriculum,
19 developing methods of evaluating student learning, determining
20 strategies for the delivery of instruction, encouraging
21 parental involvement in education and determining class size.

22 E. An impasse resolution or an agreement provision
23 by the state and an exclusive representative that requires the
24 expenditure of funds shall be contingent upon the specific
25 appropriation of funds by the legislature and the availability

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1 of funds. An impasse resolution or an agreement provision by a
2 public employer other than the state or the public schools and
3 an exclusive representative that requires the expenditure of
4 funds shall be contingent upon the specific appropriation for
5 wages by the appropriate governing body and the availability of
6 funds. An agreement provision by a local school board and an
7 exclusive representative that requires the expenditure of funds
8 shall be contingent upon ratification by the appropriate
9 governing body.

10 F. An agreement shall include a grievance procedure
11 to be used for the settlement of disputes pertaining to
12 employment terms and conditions and related personnel matters.
13 The grievance procedure shall provide for a final and binding
14 determination. The final determination shall constitute an
15 arbitration award within the meaning of the Uniform Arbitration
16 Act; provided that, in any judicial review of the award, the
17 court shall determine whether the award is arbitrary, unlawful,
18 unreasonable, capricious or not based on substantial evidence.
19 The costs of an arbitration proceeding conducted pursuant to
20 this subsection shall be shared equally by the parties.

21 G. The following meetings shall be closed:

22 (1) meetings for the discussion of bargaining
23 strategy preliminary to collective bargaining negotiations
24 between the public employer and the exclusive representative of
25 the public employees of the public employer;

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- 1 (2) collective bargaining sessions; and
2 (3) consultations and impasse resolution
3 procedures at which the public employer and the exclusive
4 representative of the appropriate bargaining unit are present.

5 Section 18. IMPASSE RESOLUTION. --

6 A. The following negotiations and impasse
7 procedures shall be followed by the state and exclusive
8 representatives for state employees:

9 (1) a request to the state for the
10 commencement of initial negotiations shall be filed in writing
11 by the exclusive representative no later than June 1 of the
12 year in which negotiations are to take place. Negotiations
13 shall begin no later than July 1 of that year;

14 (2) in subsequent years, negotiations agreed
15 to by the parties shall begin no later than August 1 following
16 the submission of written notice to the state by the exclusive
17 representative no later than July 1 of the year in which
18 negotiations are to take place;

19 (3) if an impasse occurs during negotiations
20 between the parties, and if an agreement is not reached by the
21 parties by October 1, either party may request mediation
22 services from the board. A mediator from the federal mediation
23 and conciliation service shall be assigned by the board to
24 assist in negotiations unless the parties agree to another
25 mediator;

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1 (4) the mediator shall provide services to the
2 parties until the parties reach agreement or the mediator
3 believes that mediation services are no longer helpful or until
4 December 1, whichever occurs first; and

5 (5) if the impasse continues after December 1,
6 either party may request the formation of an arbitration panel.
7 Upon the request for an arbitration panel, the unresolved
8 issues shall be resolved pursuant to the Uniform Arbitration
9 Act by an arbitration panel consisting of one member appointed
10 by the exclusive representative, one member appointed by the
11 state and a third member appointed by the other two members;
12 provided that, in any judicial review of the decision of the
13 arbitration panel, the court shall determine whether the
14 decision is arbitrary, capricious or unlawful.

15 B. The following impasse procedures shall be
16 followed by all public employers and exclusive representatives,
17 except the state and the state's exclusive representatives:

18 (1) if an impasse occurs, either party may
19 request from the board or local board that a mediator be
20 assigned to the negotiations unless the parties can agree on a
21 mediator. A mediator with the federal mediation and
22 conciliation service shall be assigned by the board or local
23 board to assist negotiations unless the parties agree to
24 another mediator; and

25 (2) if the impasse continues after a sixty-day

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1 mediation period, either party may request the formation of an
2 arbitration panel. Upon the request for an arbitration panel,
3 the unresolved issues shall be resolved pursuant to the Uniform
4 Arbitration Act by an arbitration panel consisting of one
5 member appointed by the exclusive representative, one member
6 appointed by the public employer and a third member appointed
7 by the other two members; provided that, in any judicial review
8 of the decision of the arbitration panel, the court shall
9 determine whether the decision is arbitrary, capricious or
10 unlawful.

11 C. A public employer other than the state may enter
12 into a written agreement with the exclusive representative
13 setting forth an alternative impasse resolution procedure.

14 D. In the event that an impasse continues after the
15 expiration of a contract, the existing contract will continue
16 in full force and effect until it is replaced by a subsequent
17 written agreement.

18 Section 19. PUBLIC EMPLOYERS--PROHIBITED PRACTICES.--A
19 public employer or his representative shall not:

20 A. discriminate against a public employee with
21 regard to terms and conditions of employment because of the
22 employee's membership in a labor organization;

23 B. interfere with, restrain or coerce a public
24 employee in the exercise of a right guaranteed pursuant to the
25 Public Employee Bargaining Act;

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1 C. dominate or interfere in the formation,
2 existence or administration of a labor organization;

3 D. discriminate in regard to hiring, tenure or a
4 term or condition of employment in order to encourage or
5 discourage membership in a labor organization;

6 E. discharge or otherwise discriminate against a
7 public employee because he has signed or filed an affidavit,
8 petition, grievance or complaint or given information or
9 testimony pursuant to the provisions of the Public Employee
10 Bargaining Act or because a public employee is forming, joining
11 or choosing to be represented by a labor organization;

12 F. refuse to bargain collectively in good faith
13 with the exclusive representative;

14 G. refuse or fail to comply with a provision of the
15 Public Employee Bargaining Act or board rule; or

16 H. refuse or fail to comply with a collective
17 bargaining agreement.

18 Section 20. PUBLIC EMPLOYEES--LABOR ORGANIZATIONS--
19 PROHIBITED PRACTICES. --A public employee or labor organization
20 or its representative shall not:

21 A. discriminate against a public employee with
22 regard to labor organization membership because of race, color,
23 religion, creed, age, sex or national origin;

24 B. interfere with, restrain or coerce any public
25 employee in the exercise of a right guaranteed pursuant to the

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1 provisions of the Public Employee Bargaining Act;

2 C. refuse to bargain collectively in good faith
3 with a public employer;

4 D. refuse or fail to comply with a collective
5 bargaining or other agreement with the public employer;

6 E. refuse or fail to comply with a provision of the
7 Public Employee Bargaining Act; or

8 F. picket homes or private businesses of elected
9 officials or public employees.

10 Section 21. STRIKES AND LOCKOUTS PROHIBITED. --

11 A. A public employee or labor organization shall
12 not engage in a strike. A labor organization shall not cause,
13 instigate, encourage or support a public employee strike. A
14 public employer shall not cause, instigate or engage in a
15 public employee lockout.

16 B. A public employer may apply to the district
17 court for injunctive relief to end a strike, and an exclusive
18 representative of public employees affected by a lockout may
19 apply to the district court for injunctive relief to end a
20 lockout.

21 Section 22. AGREEMENTS VALID-- ENFORCEMENT. -- Collective
22 bargaining agreements and other agreements between public
23 employers and exclusive representatives shall be valid and
24 enforceable according to their terms when entered into in
25 accordance with the provisions of the Public Employee

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1 Bargaining Act.

2 Section 23. JUDICIAL ENFORCEMENT--STANDARD OF REVIEW.--

3 A. The board or local board may request the
4 district court to enforce orders issued pursuant to the Public
5 Employee Bargaining Act, including those for appropriate
6 temporary relief and restraining orders. The court shall
7 consider the request for enforcement on the record made before
8 the board or local board. It shall uphold the action of the
9 board or local board and take appropriate action to enforce it
10 unless it concludes that the order is:

- 11 (1) arbitrary, capricious or an abuse of
- 12 discretion; or
- 13 (2) otherwise not in accordance with law.

14 B. A person or party, including a labor
15 organization affected by a final rule, order or decision of the
16 board or local board, may appeal to the district court for
17 further relief. All such appeals shall be based upon the
18 record made at the board or local board hearing. All such
19 appeals to the district court shall be taken within thirty days
20 of the date of the final rule, order or decision of the board
21 or local board. Actions taken by the board or local board
22 shall be affirmed unless the court concludes that the action
23 is:

- 24 (1) arbitrary, capricious or an abuse of
- 25 discretion; or

1 (2) otherwise not in accordance with the law.

2 Section 24. EXISTING COLLECTIVE BARGAINING UNITS. --

3 A. Bargaining units established prior to July 1,
4 1999 shall continue to be recognized as appropriate bargaining
5 units for the purposes of the Public Employee Bargaining Act.
6 Bargaining units established between July 1, 1999 and the
7 effective date of that act shall continue in effect only if the
8 unit is covered by a collective bargaining agreement on the
9 date of this act.

10 B. A labor organization that was recognized by a
11 state employer as the exclusive representative of an
12 appropriate bargaining unit on June 30, 1999 shall be
13 recognized as the exclusive representative of the unit on the
14 effective date of the Public Employee Bargaining Act; provided,
15 however, that the state employer shall not enter into a new
16 collective bargaining agreement pursuant to this subsection
17 unless the labor organization demonstrates majority support to
18 the state employer pursuant to Section 14 of the Public
19 Employee Bargaining Act.

20 Section 25. EXISTING COLLECTIVE BARGAINING AGREEMENTS. --

21 Nothing in the Public Employee Bargaining Act shall be
22 construed to annul or modify a collective bargaining agreement
23 entered into between a public employer and an exclusive
24 representative prior to the effective date of the Public
25 Employee Bargaining Act.

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1 Section 26. EXISTING ORDINANCES PROVIDING FOR PUBLIC
2 EMPLOYEE BARGAINING. --

3 A. A public employer other than the state that
4 prior to October 1, 1999 adopted by ordinance, resolution or
5 charter amendment a system of provisions and procedures
6 permitting employees to form, join or assist a labor
7 organization for the purpose of bargaining collectively through
8 exclusive representatives may continue to operate under those
9 provisions and procedures provided the board has determined
10 that the system of provisions and procedures and the continuing
11 implementation thereof are substantially equivalent to the
12 provisions and procedures set forth in the Public Employee
13 Bargaining Act.

14 B. A public employer other than the state that
15 subsequent to October 1, 1999 adopts by ordinance, resolution
16 or charter amendment a system of provisions and procedures
17 permitting employees to form, join or assist a labor
18 organization for the purpose of bargaining collectively through
19 exclusive representatives freely chosen by its employees may
20 operate under those provisions and procedures rather than those
21 set forth in the Public Employee Bargaining Act; provided that
22 the employer shall comply with the provisions of Sections 8
23 through 12 of that act and provided the following provisions
24 and procedures are included in each ordinance, resolution or
25 charter amendment:

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1 (1) the right of public employees to form,
2 join or assist employee organizations for the purpose of
3 achieving collective bargaining;

4 (2) procedures for the identification of
5 appropriate bargaining units, certification elections and
6 decertification elections equivalent to those set forth in the
7 Public Employee Bargaining Act;

8 (3) the right of a labor organization to be
9 certified as an exclusive representative;

10 (4) the right of an exclusive representative
11 to negotiate all wages, hours and other terms and conditions of
12 employment for public employees in the appropriate bargaining
13 unit;

14 (5) the obligation to incorporate agreements
15 reached by the public employer and the exclusive representative
16 into a collective bargaining agreement;

17 (6) a requirement that grievance procedures
18 culminating with binding arbitration be negotiated;

19 (7) a requirement that payroll deduction for
20 the exclusive representative's membership dues be negotiated if
21 requested by the exclusive representative;

22 (8) impasse resolution procedures equivalent
23 to those set forth in Section 18 of the Public Employee
24 Bargaining Act; and

25 (9) prohibited practices for the public

1 employer, public employees and labor organizations that promote
2 the principles established in Sections 19 through 21 of the
3 Public Employee Bargaining Act.

4 Section 27. SEVERABILITY. --If any part or application of
5 the Public Employee Bargaining Act is held invalid, the
6 remainder or its application to other situations or persons
7 shall not be affected.

8 Section 28. EFFECTIVE DATE. --The effective date of the
9 provisions of this act is July 1, 2003.